



4410-15

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Comprehensive Environmental Response, Compensation, and Liability Act

On March 7, 2019, the Department of Justice lodged for public comment a Consent Decree with defendants Atlantic Wood Industries, Inc. (AWI), and Atlantic Metrocast, Inc. (AMI), in the United States District Court for the Eastern District of Virginia, Norfolk Division, Civil Action No. 2:19-cv-00109. The proposed consent decree resolves claims in a complaint that the United States on behalf of EPA filed in the Eastern District of Virginia asserting claims under Section 107(a)(1) and (2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a)(1) and (2), against AWI as former owner and operator and current owner of the AWI Superfund Site, located in Portsmouth, Virginia; and against its subsidiary AMI as a current operator of the Site. The Complaint also includes a claim on behalf of the Department of the Interior (DOI) through the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA) against AWI and AMI under CERCLA Section 107(a)(4)(C) for natural resources damages. The Commonwealth of Virginia also will file an uncontested motion to intervene in the case to assert claims against the United States on behalf of the Navy and against AWI and AMI under CERCLA and Virginia law, which will also be resolved through the proposed consent decree.

Under the proposed decree, AWI will pay \$250,000 with interest to Plaintiffs, with \$75,000 to the United States on behalf of EPA, and \$175,000 to Virginia, in ten installment payments over nine years from entry. It also agrees to retain \$15 million in CERCLA liability and a lien on its real property against that liability, which liability and lien will be reduced to

fifty percent of the appraised value of the property after nine years from entry of the Consent Decree, when EPA expects the cleanup to be complete. AWI further concedes title to Virginia to new land that was created along its waterfront as part of the remedial action, and Virginia and EPA agree to a division of rental income or sales proceeds in connection with that new land. AWI agrees as part of the settlement to an environmental covenant which will impose institutional controls on its use of the property and which AWI/AMI will record so that it will run with the land. Finally, AWI agrees to perform proper operation and maintenance on its property, both in the Consent Decree and in a detailed appendix.

The United States on behalf of the Navy and the Department of Defense (“DOD”) resolves its potential liability to AWI in the proposed decree, and pays its equitable share of response costs at the Site through a payment of \$55,325,966 to EPA from the Judgment Fund. The United States will also pay \$8.5 million to Virginia from the Judgment Fund for its share of Virginia’s past costs and of the costs of Virginia’s future operation and maintenance of the Site. The Navy and DOD and Virginia have agreed that if EPA requires future groundwater treatment, then the Navy and DOD will pay 50% of Virginia’s response costs under a “pay go” arrangement where Virginia pays the treatment costs up front and invoices 50% of the costs to the Navy and DOD on a regular basis.

The proposed Consent Decree also resolves the claims against the Navy and DOD for natural resource damages of NOAA, DOI, and the Commonwealth of Virginia by payment from the Judgment Fund of (1) \$ 1.5 million to Virginia to fund oyster restoration in the Southern or Eastern Elizabeth River; and (2) \$94,660 to NOAA and DOI for their past costs.

The Consent Decree contains standard CERCLA covenants and reservations, as well as a reopener for CERCLA natural resource damage claims.

AWI agrees in the proposed Consent Decree to dismiss with prejudice its petition for review in *Atlantic Wood Industries, Inc. v. EPA* (D.C. Cir.) contending that EPA's record of decision impermissibly amends the NPL listing for the Site by expanding the Site boundaries to include sediments in the Elizabeth River.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Atlantic Wood Industries, et al.*, Civil Action No. 2:19-cv-00109, DOJ # 90-11-3-580/1. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library
U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Please enclose a check or money order for \$ 31.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is \$22.50.

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[FR Doc. 2019-04606 Filed: 3/12/2019 8:45 am; Publication Date: 3/13/2019]